

Attachment B: DATA USE AGREEMENT
BETWEEN THE HEALTH CARE FINANCING ADMINISTRATION (HCFA) AND THE STATE
OF _____

AGREEMENT FOR USE OF HEALTH CARE FINANCING ADMINISTRATION (HCFA) DATA
CONTAINING INDIVIDUAL-SPECIFIC INFORMATION

In order to secure data that resides in a HCFA Privacy Act System of Records, and in order to ensure the integrity, security, and confidentiality of information maintained by the Health Care Financing Administration (HCFA), and to permit appropriate disclosure and use of such data as permitted by law, HCFA and _____, enter into this agreement to comply with the following specific paragraphs.

1. This Agreement is by and between HCFA, a component of the U.S. Department of Health and Human Services (DHHS), and _____, hereinafter termed "User."
2. This Agreement addresses the conditions under which HCFA will disclose and the User will obtain and use the HCFA Enrollment Database (EDB) Customized State File specified in section 7. This Agreement supersedes any and all agreements between the parties with respect to the use of the EDB Customized State File, and preempts and overrides any instructions, directions, agreements, or other understanding in or pertaining to any grant award or other prior communication from the Department of Health and Human Services or any of its components with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement, or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the HCFA point-of-contact specified in section 5, or the HCFA signatory to this Agreement shown in section 20.
3. The parties mutually agree that HCFA retains all ownership rights to the data file(s) referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by HCFA.
4. The parties mutually agree that the following named individual is designated as "Custodian" of the file(s) on behalf of the User, and will be personally responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify HCFA within fifteen (15) days of any change of custodianship. The parties mutually agree that

HCFA may disapprove the appointment of a custodian, or may require the appointment of a new custodian at any time.

(Name of Custodian)

(Company/Organization)

(Street Address)

(City/State/ZIP Code)

(Phone Number Including Area Code and E-mail Address if applicable)

5. The parties mutually agree that the following named individual will be designated as “point-of-contact” (or “System Manager”) for the Agreement on behalf of HCFA.

Art Weatherbee, Center for Beneficiary Services, Beneficiary Membership Administration Group
(Name of Contact)

Director, Division of Membership Operations, Enrollment Branch
(Title/Component)

7500 Security Blvd.
(Street Address)

Baltimore, MD 21244-1850
(City/State/ZIP Code)

410-786-2746/AWeatherbee@HCFA.GOV
(Phone Number Including Area Code and E-mail Address if applicable)

6. The User represents and warrants, and in furnishing the EDB Customized State File, HCFA relies upon such representation and warranty, that this file(s) will be used solely for the purpose(s) outlined below.

The EDB Customized State File is used for the following:

- A. To enable the User to identify Medicare individuals who are potentially eligible for inclusion in a State Buy-In account, including Qualified Medicare Beneficiaries (QMBs);
- B. To identify Medicare/Medicaid dually eligible individuals for whom Medicaid has secondary payer liability; and
- C. To support the development of risk adjustment factors which are a necessary element in establishing capitation rates or prospective payment levels, and which contribute to sound fiscal planning and the evaluation of future program initiatives.

The User represents and warrants further that, except as specified in an Attachment to this Agreement or except as HCFA shall authorize in writing, the User shall not

disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person(s). The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section and to those individuals on a need-to-know basis only. Disclosure of this data is made pursuant to:

- Freedom of Information Act (5 U.S.C. Section 552)
 - Privacy Act (5 U.S.C. Section 552a)
 - Section 1106 of the Social Security Act (42 U.S.C. Section 1306)
 - Computer Matching and Privacy Protection Act of 1988 (P.L. 100-503)
 - Section 1843 of the Social Security Act (42 U.S.C. Section 1395v)
7. HCFA will provide the User with the EDB Customized State File, which is an extract from the Health Insurance Master Record (HIMR), System Number 09-07-0502. HCFA warrants that the file is accurate to the extent possible. Beneficiaries included in the EDB Customized State File will vary from State to State depending on the size of the finder file.
 8. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s) [includes any file that maintains or continues identification of individuals]) may be retained by the User only for the period of time required for any processing related to matching under this Agreement. The User agrees to notify HCFA within 30 days of the completion of the purpose specified above in section 6. Upon such notice, HCFA will notify the User either to return all data files to HCFA at the User's expense, or to destroy such data. If HCFA elects to have the User destroy the data, the User agrees to certify the destruction of the files in writing within 30 days of HCFA's instruction. A statement certifying this action *must* be sent to HCFA. If HCFA elects to have the data returned, the User agrees to return all files to HCFA within 30 days of receiving notice to that effect. The User agrees that no data from HCFA records, or any parts thereof, shall be retained when the aforementioned file(s) are returned or destroyed unless authorization in writing for the retention of such file(s) has been received from the appropriate Systems Manager or the person designated in section 20 of this Agreement. The User acknowledges that stringent adherence to the aforementioned information outlined in this paragraph is required. The User further acknowledges that the EDB Customized State File received for any previous periods, and all copies thereof, must be destroyed upon receipt of an updated version, and verification made to HCFA. Certification of the destruction of these files is required in writing within 30 days of such destruction.
 9. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data, and to prevent its unauthorized use or access. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III--Security of Federal Automated Information Systems, which sets forth guidelines for security plans for automated information systems in Federal agencies. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified above in section 7 is strictly prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way from the site indicated above in section 4, without written approval from HCFA.
 10. The User agrees that the authorized representatives of HCFA, DHHS Office of the Inspector General or Comptroller General, will be granted access to premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements confirming whether the User is in compliance with the security requirements specified in section 9 above.
 11. The User agrees that no findings, listing, or information derived from the file(s) specified in section 7, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a beneficiary's identification, without

first obtaining written authorization from the appropriate System Manager or the person designated in section 20 of this Agreement. (Examples of such data elements include, but are not limited to, address, sex, age, medical diagnosis, procedure, admission/discharge dates, date of death, etc.) The User agrees further that HCFA shall be the sole judge as to whether any finding, listing, or information, or any combination of data extracted or derived from HCFA's files identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual with a reasonable degree of certainty.

12. The User agrees that, absent express written authorization from the appropriate System Manager or the person designated in section 20 to do so or as outlined in this agreement, the User shall make no attempt to link records included in the file(s) specified in section 7 to any other identifiable source of information. This includes attempts to link to other HCFA data files.
13. The User understands and agrees that they may not reuse original or derivative data file(s) without prior written approval from the appropriate System Manager or the person designated in section 20 of this Agreement.
14. The parties mutually agree that the following specified Attachments are part of this Agreement:
 - The Federal Register notice which includes the routine use for disclosure of information in the system to a state agency, an agency of a state government, an agency established by state law, or its fiscal agent.
15. The User agrees that in the event HCFA determines or has a reasonable belief that the User has made or may have made disclosure of the aforesaid file(s) that is not authorized by this Agreement, or other written authorization from the appropriate Systems Manager or the person designated in section 20, HCFA in its sole discretion may require the User to: (a) promptly investigate and report to HCFA the User's determinations regarding any alleged or actual unauthorized disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by HCFA, submit a formal written response to an allegation of unauthorized disclosure; (d) if requested by HCFA, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and (e) if requested by HCFA, return data files to HCFA immediately. The User understands that as a result of HCFA's determination or reasonable belief that unauthorized disclosures have taken place, HCFA may refuse to release further HCFA data to the User for a period of time to be determined by HCFA.
16. The User hereby acknowledges those criminal penalties under Section 1106(a) of the Social Security Act (42 U.S.C. Section 1306(a)), including a fine not exceeding \$10,000 or imprisonment not exceeding five years, or both, may apply with respect to any disclosure of information in the file(s) specified in section 7 that is inconsistent with the terms of this Agreement. The User further understands that criminal penalties under the Privacy Act (5 U.S.C. Sections 552a(1) and (3)) may apply if it is determined that the Requestor or Custodian, or any individual employed or affiliated therewith, knowingly and willfully obtained the files under false pretenses. Any person found guilty under the Privacy Act shall be guilty of a misdemeanor and fined not more than \$5,000. Further, the User acknowledges that criminal penalties may be imposed under 18 U.S.C. Section 641, which provides that if it is determined that the User, or any individual employed or affiliated therewith, has taken or converted to his own use data file(s), or received the file(s) knowing that they were stolen or converted; they shall be fined not more than \$10,000 or imprisoned not more than 10 years, or both. In addition, the User and any individual employed or affiliated therewith, may be subject to civil suit under the Privacy Act for damages which occur as a result of willful or intentional actions which violate an individual's rights under the Privacy Act.
17. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in section 7, and acknowledges having received notice of potential criminal, administrative, or civil penalties for violation of the terms of the Agreement.

18. On behalf of the User, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein. This agreement shall be effective 40 days after notice of routine use is sent to Congress and OMB, or 30 days after publication of this notice in the Federal Register, or upon signature by both parties, whichever is latest. The duration of this Agreement is two years from the effective date. The User also acknowledges that this agreement may be terminated at any time with the consent of both parties involved. Either party may independently terminate the agreement upon written request to the other party, in which case the termination shall be effective 90 days after the date of the notice, or at a later date specified in the notice.

(Name/Title of Individual)

(State Agency/Organization)

(Street Address)

(City/State/ZIP Code)

(Phone Number Including Area Code and E-mail Address if applicable)

Signature

Date

19. The Custodian, as named in section 4, hereby acknowledges his/her appointment as Custodian of the aforesaid file(s) on behalf of the User, and agrees personally and in a representative capacity to comply with all of the provisions of this Agreement on behalf of the User.

(Typed or Printed Name of Custodian)

Signature

Date

20. On behalf of HCFA, the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

Art Weatherbee, Director

(Typed or Printed Name and Title of HCFA Representative)

Signature

Date